

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday, March 18, 2010
9:30 am or upon adjournment of session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers (with Carol Mortensen and Rachel Machi Wagoner)

Joint Oversight (with Senate Committee on Environmental Quality)

	<u>Page</u>
• Implementation of the Green Chemistry Initiative – AB 1879 (Feuer) and SB 509 (Simitian) of 20082	
• Reorganization of the Integrated Waste Management Board – SB 63 (Strickland) of 2009	4
<u>Item</u> <u>Department</u>	
3900 Air Resources Board	8

Scheduled Break (up to 30 minutes)

Vote-Only Item

3930 Department of Pesticide Regulation	16
--	----

Discussion Items

3960 Department of Toxic Substances Control	17
Various SB 63-Implementation Budget Proposals <i>(Including requests from: Secretary for Environmental Protection; Department of Resources Recycling and Recovery; and Department of Conservation)</i>	20
Various Integrated Waste Management Account Reductions <i>(Including requests from: Secretary for Environmental Protection; Department of Resources Recycling and Recovery; State Water Resources Control Board; and Office of Environmental Health Hazard Assessment)</i>	22
3500 Department of Resources Recycling and Recovery	26
3940 State Water Resources Control Board	29

Resources—Environmental Protection—Energy—Transportation

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

**Oversight on Green Chemistry:
Implementation of AB 1879 (Feuer, 2008) and SB 509 (Simitian, 2008)**

**Assembly Bill 1879 (Feuer) Chapter 559, Statutes of 2008 and
Senate Bill 509 (Simitian) Chapter 560, Statutes of 2008**

In 2008, Assembly Bill 1879 (Feuer) and Senate Bill 509 (Simitian) were signed by the Governor to implement together two key pieces of a green chemistry initiative for California.

AB 1879 (Feuer) requires the Department of Toxic Substances Control (DTSC) to adopt regulations to: 1) establish a process to identify and prioritize chemicals or chemical ingredients in products that may be considered a "chemical of concern;" 2) establish a process for evaluating chemicals of concern in products, and their potential alternatives in order to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, as specified; and 3) establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by alternatives, as well as an evaluation of critical exposure pathways. The bill requires that the regulations include life cycle assessment tools that take into consideration numerous factors as specified and provides for the establishment of a Green Ribbon Science Panel, with expertise that includes fifteen disciplines (e.g., chemistry, environmental law, nanotechnology, maternal and child health) to advise on the development and implementation of the regulations and the Toxic Information Clearinghouse.

SB 509 (Simitian) requires DTSC to establish a Toxics Information Clearinghouse for the collection, maintenance, and distribution of specific chemical hazard traits and environmental and toxicological end-point data. The bill also requires the Office of Environmental Health Hazard Assessment to evaluate and specify the hazard traits and environmental and toxicological end-points and any other relevant data that are to be included in the clearinghouse.

DTSC recently released a framework to illustrate the concept of the regulations that DTSC is currently working to develop. According to DTSC, the projected release date of the proposed regulations is late spring early summer and the department projects completing and adopting the final regulations by the end of 2010.

BACKGROUND

It was the intent of the Legislature in passing AB 1879 and SB 509 to replace the chemical-by-chemical legislative agenda that the California Legislature has had to increasingly confront over the last decade and build a transparent process by which evaluation of chemicals and chemical policy can take place in California. The increasing demands for an effective chemical policy in California are largely due to the failure of federal and state statutes and programs to provide effect analyses and protections to potential health and environmental chemical exposures. DTSC needs to demonstrate that it can rapidly and effectively deploy a program capable of expeditiously acting on known federal programs, which are too often characterized by numerous procedural steps and exhaustive analyses, but with few substantive protections.

POLICY ISSUES

California's Green Chemistry programs have the potential to be the nation's leader in chemical policy reform. In order to ensure that green chemistry is a robust and effective initiative for California, it is crucial that the regulations and website adopted and implemented pursuant to AB 1879 and SB 509 be accomplished correctly and reflect the intent of the enacting legislation.

- No Budget Change Proposal (BCP). With the development of the regulations and website and anticipated implementation, it was expected that DTSC would submit a BCP

for Budget Year 2010-2011 that reflects the changes in workload and anticipated needs for implementation. However, the Administration did not submit a BCP. According to DTSC, the department has been able to effectively redirect existing resources to fulfill the needs of green chemistry.

How has that impacted the existing workload of the department and how are those prior responsibilities being covered? Additionally, how does DTSC envision generating the needed funds for implementation of the green chemistry programs? Will that be reflected in the regulations?

- Timeline for Implementation. DTSC has previously stated that it is the intention of the Administration to complete and adopt final regulations for implementation of the green chemistry bills by the end of 2010 and projects release of proposed regulations by the beginning of the summer of 2010.

What is the specific timeline for the development of the regulations and the website? Is there adequate opportunity for public comment and review of the proposed programs built into that timeline?

- The framework and AB 1879 and SB 509. DTSC has been working over the last year to develop both the green chemistry regulations and the Toxic Information Clearinghouse.

Does what has been developed to date truly reflect the intent of the enacting legislation and the letter of the law? Are there issues missing?

SUMMARY

DTSC will be completing the development phase of both the regulations and the Toxic Information Clearinghouse over the next eight months. It is crucial that the Legislature ensure that what is constructed in this short timeline meets the intent of AB 1879 and SB 509 and enacts an effective and robust green chemistry program for California.

Action: No action required; however, the Chair requested the DTSC, to provide a Green Chemistry budget plan before the close of Subcommittee deliberations. [Staff notes: Notwithstanding the Administration's contention that regulations need to be completed before a long-term funding plan can be developed, the DTSC is far enough along in its process that a rough estimate (or perhaps a range of estimates) of program costs is not an inappropriate request. If the DTSC needs to make certain assumptions or present several regulatory scenarios, that would likely be acceptable to the Committee in order to provide at least a rough picture of potential future costs.]

California Integrated Waste Management Board and Division of Recycling Reorganization: Oversight Status Update

Senate Bill 63 (Strickland) Chapter 21, Statutes of 2009.

In June 2009, as part of the budget package, the Governor signed SB 63 (Strickland) Chapter 21, Statutes of 2009, that abolishes the Integrated Waste Management Board (IWMB) and consolidates its programs with the Division of Recycling (Bottle Bill Program) into a new Department of Resources Recycling and Recovery (DRRR) within the Natural Resources Agency (NRA). SB 63 also shifts the functions and civil service staff of the CIWMB to the new DRRR; moves the Education and the Environment Initiative from the CIWMB to the California Environmental Protection Agency; transfers recycling activities and civil service staff working on those recycling activities from the Department of Conservation (DOC) to a division within the new DRRR; and allows the Governor to appoint the director of the DRRR subject to Senate confirmation.

The elimination of an open public process inherent with a board structure and reorganization of the State's two solid waste management and recycling entities is a significant policy and budgetary undertaking.

There are several budget change proposals (BCPs) related to the reorganization. However, they in most part do not address or answer fundamental policy questions about the form and function of the new DRRR. This hearing provides an opportunity for a status update from DRRR regarding the status of reorganization in both a policy as well as a budget sense. The LAO will also offer some brief policy considerations.

BACKGROUND

The former Integrated Waste Management Board.

The former IWMB was housed within the California Environmental Protection Agency (CalEPA) with sister regulatory agencies including the Air Resources Board, State Water Resources Control Board, Department of Toxic Substances Control, and Department of Pesticide Regulation as well as the Office of Environmental Health Hazard Assessment.

The IWMB was responsible for implementing the Integrated Waste Management Act of 1989 including enforcement of the Act. The IWMB's core functions included:

- Enforcing the mandate on local jurisdictions to achieve and maintain a 50 percent diversion of their solid waste going to landfills.
- Permitting and overseeing, in partnership with local enforcement agencies, solid waste facilities, including landfills that manage solid waste, and providing for the safe disposal of the waste that cannot be diverted.

- Developing markets, in partnership with generators, businesses, service providers and end-users, for waste materials.
- Pursuant to additional legislative requirements added to the original Act over the last twenty years, implementing programs relating to a multitude of waste streams, not all directly related to solid waste including, but not limited to waste tires, used oil, electronic waste, household hazardous waste, universal waste, and pharmaceutical waste.

The former Division of Recycling (DOR).

The former DOR was part of the Department of Conservation (DOC) within the NRA. The NRA sets policies and coordinates the environmental preservation and restoration activities of its 26 departments, boards, commissions, and conservancies. DOC has oversight over a variety of resource conservation programs including Geology and Mines, Land Resource Protection, and Oil, Gas & Geothermal Resources.

DOR administered the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill Program) to achieve an 80 percent recycling rate for glass, aluminum, and plastic beverage containers sold in California through a deposit and redemption system.

June 10, 2009 Environmental Quality Committee's recommended alternative.

To increase efficiencies, save resources, and improve protection of public health and the environmental protection, an alternative proposal recommended by the Environmental Quality Committee following its June 10, 2009, hearing would abolish the structures of the IWMB, DTSC, and DOC and move the related functions of Radiological Health Branch from DPH into a new smaller, more accountable board structure under CalEPA. The recommended committee alternative would:

- Establish a new 5-member, full time board, the Pollution Prevention and Recycling Board (PPRB), with policy development, oversight, and appellate functions.
- Establish qualification standards for board members to reflect the new responsibilities and to ensure expertise in the expanded policy areas.
- Consolidate common functions (permitting, pollution prevention, recycling, and remediation) into new divisions under the new board.
- Decrease the board members' pay by the commensurate amount as rank and file state employees in this budget crisis.
- Eliminate the advisor positions associated with the IWMB members.

- Eliminate duplicative high level executive positions and related staff.
- Require the new board to establish a new organization and management structure to realize savings from consolidation, including a reduction of 50 percent in the number of executive and upper level management positions.
- Eliminate duplicative activities in such support areas as, administrative and technical support, public affairs, and legislation.
- Consolidate the numerous field offices held by all involved entities.

Changes under the Committee's recommendation would have greatly increased the efficiency of waste management, increase pollution prevention by consolidating like programs and setting similar, protective, enforceable standards. It would allow all stakeholders, especially the general public, access to the policy development and decision making processes to set those standards. It would allow important programs such as facility permitting, local government waste diversion, green chemistry, pollution prevention, and enforcement to benefit from the sharing of expertise, experience, and resources for improved public health and environmental protection.

POLICY ISSUES

While consolidating recycling/solid waste-related programs has merit, the SB 63 approach contains many flaws that could produce undesirable outcomes that may well set the state back in terms of environmental protection and resource conservation, including:

- Lack of general fund savings. SB 63, dealing with special fund programs, does not have any realized general fund budgetary savings – and thereby offers no relief to the state's current budget challenge.
- Loss of public participation. DOC had no mandated public participation processes that are inherent in the former IWMB board structure. Even with frequent workshops and meetings, the lack of mandated decision making in a board process, lacks public access and accountability.
- Lack of efficiency. The public, as well as stakeholders affected by SB 63, will be forced to deal with cross-agency challenges. This will require these interests to keep track and learn the processes and procedures of entities within two separate oversight agencies (Cal EPA and NRA) (e.g., DTSC for electronic waste, used oil, household hazardous waste; SWRCB for landfill oversight).
- Loss of cross-media coordination. The IWMB was involved in numerous cross-media efforts with programs overseen by Cal EPA including such programs as California / Mexico Border; Environmental Enforcement; Environmental

Education; as well as data and electronic media coordination. It is unclear as to the fate of these efforts that were supported in part by IWMB funds and staff.

SUMMARY

Implementation of the reorganization of the IWMB and DOR into the new DRRR is proceeding. However, as it is critical to ensure public health and safety and environmental protection, it is necessary that the policies and programs that are now housed at DRRR are implemented to the fullest extent intended by the Legislature. It is also timely to begin to observe and track challenges as well as efficiencies gained with this reorganization to enable the Legislature to take the next steps necessary to further reorganize and align environmental oversight and enforcement programs for maximum protection and efficiency.

<i>Action: No action required; however, the Chair requested the DRRR to keep the Committee informed (via staff) of any future plans to realign or reorganize (i.e., streamline) department activities.</i>

Department Proposed for Discussion

3900 Air Resources Board

The Air Resources Board (ARB), along with 35 local air pollution control and air quality management districts, protects the state's air quality. The local air districts regulate stationary sources of pollution and prepare local implementation plans to achieve compliance with federal and state standards. The ARB is responsible primarily for the regulation of mobile sources of pollution and for the review of local district programs and plans. The ARB also establishes air quality standards for certain pollutants, administers air pollution research studies, and identifies and controls toxic air pollutants.

Governor's Budget. The Governor's Budget includes \$601.9 million (no GF) for support of the ARB in FY 2010-11. This is a 30 percent decrease over current year expenditures due primarily to a reduction in Proposition 1B (Transportation Bond) expenditures.

DISCUSSION ITEMS

1. Administration's Recent Renewable Portfolio Standard (RPS) Activity Circumvents Legislative Authority.

Background. The LAO recently released its analysis of the 2010-11 Governor's Budget for the Resources and Environmental Protection areas. Below is the bulk of the LAO's write-up with some staff edits for brevity:

Current RPS Law

RPS Standard Now Set at 20 Percent. Current law, as amended in 2006, requires each privately owned electric utility to increase its share of electricity generated from eligible renewable energy resources by at least 1 percent each year so that, by the end of 2010, 20 percent of its electricity comes from renewable sources.

Enforcing the RPS. Current law requires the California Public Utilities Commission (CPUC) to enforce compliance by the private utilities (commonly referred to as investor-owned utilities, or IOUs) with the 20 percent RPS. The CPUC is prohibited from ordering an IOU to procure more than 20 percent of its retail sales of electricity from eligible renewable energy resources.

Vetoed 2009 RPS Legislation. During the 2009 legislative session, the Legislature passed, and the Governor subsequently vetoed, a package of RPS-related bills. These bills—which included SB 14 (Simitian), AB 21 (Krekorian), and AB 64 (Krekorian)—together would have increased the RPS target for IOUs to 33 percent by 2020 and also made publicly owned utilities subject to the same RPS targets as these other electricity providers. In his veto messages, the

Governor cited his policy concerns about the Legislature's approach to meeting a 33 percent RPS, a target which he nonetheless supported.

Administration's Recent RPS Activity Circumvents Legislative Authority

As discussed below, our review finds that over the last few years, the administration has been involved in a number of activities that, in effect, circumvent the Legislature's policy direction as reflected in current RPS law.

Governor's Two Executive Orders. In November 2008, the Governor issued an executive order calling for *all* providers of retail electricity (thereby including publicly owned utilities) to obtain 33 percent of their electricity from renewable sources by 2020. State government agencies were directed to "take all appropriate actions" to implement this target. In September 2009, after vetoing legislation that would have placed a 33 percent RPS target in statute, the Governor issued another executive order directing ARB to develop a regulation "consistent with" a 33 percent renewable energy target. The executive order indicated that the administration believed that it had the legal authority to establish such regulations under the Global Warming Solutions Act of 2006 (commonly referred to as "AB 32"). The ARB currently is working to develop this regulation.

Executive Orders Cannot Replace or Circumvent Lawmaking. In a recent written opinion, the Legislative Counsel advised us that, as a general proposition, the Governor may not issue an executive order that has the effect of enacting, enlarging, or limiting legislation. In the context of the Governor's September 2009 executive order, we are advised that the ARB may not adopt a renewable energy-related regulation that contravenes, changes, or replaces the statutory requirements of the current RPS law. According to Legislative Counsel, AB 32 does not authorize the ARB to adopt such a regulation. Since current RPS law is very prescriptive in its requirements, this prohibition would severely constrain the ARB in developing its regulation pursuant to the executive order. For example, we are advised by Legislative Counsel that the ARB could not develop a regulation that contravenes the current-law prohibition upon requiring an IOU to procure more than 20 percent of its electricity from renewable sources. Given this legal opinion, in our view it would clearly be inappropriate for the administration to circumvent the existing RPS law by attempting to implement a new renewable energy standard on its own authority.

Planning Activities. Despite these legal constraints, the administration has been involved in various planning activities that assume an RPS target that is different than the one established in current law. For example:

- The ARB's plan to implement AB 32 (commonly referred to as the AB 32 Scoping Plan) includes a 33 percent RPS as one of its primary measures to achieve the state's greenhouse gas emission reduction goals.

- Multiple Integrated Energy Policy Reports prepared by the California Energy Commission have evaluated the state's ability to achieve a 33 percent RPS.
- The Renewable Energy Transmission Initiative planning group (an administration initiative involving multiple state energy and environmental agencies, public and private utilities, and environmental interests, among others) has conducted its planning work and analysis based on the assumption of the imposition of a 33 percent RPS target.
- The CPUC is moving forward with efforts to implement a 33 percent RPS with respect to the private utilities it regulates, through its Long-Term Procurement Plan process.

Budget Issues

Administration's Spending Related to a 33 Percent RPS. Although the Legislature has not approved a budget request related explicitly to the evaluation or implementation of a 33 percent RPS, the administration has spent significant resources for these purposes and has plans to continue this spending. The figure below summarizes these ongoing and proposed expenditures, which would total \$4 million in 2010–11 under the Governor's budget proposal.

Administration's 33 Percent RPS–Related Spending

(In Thousands)

	2009–10	2010–11
Air Resources Board		
Base budget	\$1,900	\$750
Proposed budget request	—	—
California Public Utilities Commission		
Base budget	\$553	\$423
Proposed budget request	— ^a	2,800
Totals	\$2,453	\$3,973

^a Budget request for \$322,000 was denied by the Legislature.

The ARB estimates that it will spend \$1.9 million (from the Air Pollution Control Fund) in the current year and \$750,000 in the budget year to develop RPS–related regulations pursuant to the Governor's executive order and the AB 32 Scoping Plan. No specific funding requests for this purpose have been submitted to the Legislature for the budget year. For CPUC, the *2009–10 Governor's Budget* proposed a \$322,000 increase for the commission to begin the process of implementing a 33 percent RPS. The Legislature denied this budget request, finding that the proposal was premature, pending enactment of the enabling legislation to establish the 33 percent RPS. However, the CPUC has

continued to conduct planning and analysis for a 33 percent RPS, and estimates that it will spend \$553,000 (from the Public Utilities Reimbursement Account) in the current year for this purpose (\$423,000 for staff costs and \$130,000 for consulting fees).

The CPUC plans to spend \$423,000 for staffing costs for these same purposes in the budget year from its existing budget resources. In addition, the Governor's budget includes requests totaling \$2.8 million (from the Public Utilities Commission Utilities Reimbursement Account [PUCURA]) for CPUC to implement a 33 percent RPS in 2010–11. These requests include \$1.8 million for seven personnel-years in staffing to implement a 33 percent RPS, and \$1 million annually (for each of the next five years) to contract for RPS program evaluation and technical assistance.

Administration's Spending Plans Are Problematic. The administration's spending plans discussed above are problematic for a couple of reasons. First and foremost, the expenditures by CPUC and ARB to develop RPS-related regulations are premature given the current statute authorizing a 20 percent RPS. This regulatory activity should not occur until or unless the Legislature enacts a 33 percent standard, and only then should be implemented in a fashion consistent with any policy parameters for a revised RPS that have been established by the Legislature.

The ARB's expenditures to develop a higher RPS are particularly problematic. This is because the ARB is delving into a subject matter—renewable energy procurement—that is both outside its area of statutory responsibility and outside its area of technical expertise. The ARB is spending significant funding to work with CPUC to come up to speed on the subject matter of renewable energy procurement. In our view, this is an inefficient use of state resources. These ARB activities also constitute an inappropriate duplication of effort, given that CPUC plans to move ahead at the same time to implement a 33 percent RPS that would apply to the entities that it regulates.

Analyst's Recommendations. Given that the administration's spending plans are both premature and an inefficient and duplicative use of resources, we recommend that the Legislature take the following actions to remedy this situation. Specifically, we recommend that the Legislature:

- Deny CPUC's budget request for an additional \$2.8 million (from PUCURA) for RPS-related activity in the budget year.
- Reduce CPUC's PUCURA appropriation (Item 8660–001–0462) by an additional \$423,000—the amount the commission anticipates spending from its base budget to implement a 33 percent RPS in the budget year.
- Reduce ARB's Air Pollution Control Fund appropriation (Item 3900–001–0115) by \$750,000—the amount the board anticipates spending from its

base budget to develop a renewable energy standard regulation in the budget year.

- At budget hearings, specifically direct CPUC and ARB to immediately cease spending funds for the purpose of developing a new renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

Staff Comments. A fuller discussion of the RPS and AB 32 implementation in this committee is scheduled for April 29, when the CPUC will also be on the agenda. However, given the reasoned analysis above, backed by the opinion of Legislative Counsel, the Committee may wish to act now on the LAO's recommendation vis-à-vis the ARB's budget. This would provide the Administration with ample indication of the Legislature's position on the RPS issue and would give the ARB, the CPUC, and Administration officials over a month to begin working with the Legislature on a workable (legal) resolution to the RPS debate, before the Committee takes any final action on the ARB and CPUC budgets.

Staff Recommendation: ADOPT the LAO recommendation on the ARB budget and reduce Item 3900-001-0115 by \$750,000. Additionally, DIRECT the ARB and the CPUC (in absentia) to cease spending funds for the purpose of developing a renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

VOTE:

Action: Approved Staff Recommendation on a 3-0 vote. Additionally, Senator Cogdill requested, and the ARB committed to providing by March 26, responses to the following questions:

- 1. How much has the ARB spend over the last three fiscal years on AB 32 activities, including staff, contracting, and other expenditures?**
- 2. How much has been spent on the Low Carbon Fuel Standard, Western Climate Initiative, and Renewable Energy Standard?**
- 3. I understand that the ARB has declined a request to hold a workshop explaining what its AB 32 program costs will be for 2010-11 and referred interested parties to these legislative hearings. Do you plan on explaining to the public at any point what the basis for the 2010-11 AB 32 fees will be?**
- 4. Have you updated your emissions forecast to account for the economic downturn which would be 'helping' the state achieve the 1990 emissions level target without additional requirements?**

[NOTE: Senator Cogdill departed the hearing following this vote.]

BCP-1: Support Additional Rulemaking Requirements (Implement AB 1085).

Background. Chapter 384, Statutes of 2009 (AB 1085, Mendoza) requires the ARB to make available to the public—prior to the start of a regulatory 45-day public comment period—any technical, theoretical, or empirical study, report, or similar document related to, but not limited to, air emissions, public health impacts, and economic impacts used in developing any proposed regulation.

2010-11 Governor’s Budget. The Governor requests four positions and \$559,000 (special funds) to support the ARB’s new AB 1085 rulemaking responsibilities.

Staff Comments. Based on legislative fiscal analyses, implementation of AB 1085 was expected to cost less than \$100,000. However, the ARB indicates that because AB 1085 requires substantially more information than has historically been included in the Initial Statement of Reasons that ordinarily accompanies a package of proposed regulations, additional staff resources are required. Under this proposal, the ARB would add one position for each of the areas identified in the bill (air emissions, public health impacts, and economic assessments), as well as a fourth position for general program support.

While staff acknowledges that AB 1085 requires a higher level of public disclosure regarding the analytical bases for ARB rulemaking, it is not clear whether four positions are truly justified. Simply posting links to source materials on the ARB website in order to provide the public with a rulemaking “bibliography” would appear to be a fairly low-cost, time non-intensive activity. However, the ARB reads the AB 1085 intent language as setting a much higher bar. That language is as follows:

*It is the intent of the Legislature in enacting this act to ensure that the public is provided sufficient information **so that interested parties may easily and without undue effort reproduce and verify all aspects of state board staff analysis**, related to, but not limited to, air emissions, public health impacts, and economic impacts, performed during the development of a regulation [emphasis added].*

Based on the intent stated above, the ARB believes it will be held (through litigation if necessary) to a much higher standard than a mere online bibliography. As ARB staff note, approximately a dozen or more lawsuits are already pending against the ARB, and with 20-40 rulemakings a year, the ARB is concerned that many more will follow if it fails to interpret and act upon AB 1085 in its broadest sense.

Staff notes that, notwithstanding the variability of interpretations surrounding AB 1085, the issue of ARB staffing, particularly as it relates to rulemaking, is about time. That is, given more rigorous public disclosure requirements, the ARB can meet its new obligations with existing staff, it will just take more time. Thus, additional staffing really only becomes necessary if the Legislature deems AB 1085 to have significantly increased the ARB’s workload and wishes to ensure that ARB can affect new

regulations in a timely manner. Given that some of the ARB's most sensitive work, implementing GHG emission reductions pursuant to AB 32, is already tightly governed by statutory timelines, the Committee may wish to carefully consider its desire for timely action by the ARB in weighing whether or not to provide additional staff resources.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair noted concern that the estimate provided to Appropriations staff was significantly lower than the amount requested in this BCP. The ARB committed to providing a letter to explain the discrepancy and the need for the higher level of resources. [Staff requests a copy of the DOF bill analysis.]

BCP-2: GF Elimination.

Background. The Governor vetoed \$2 million GF (previously allocated to air pollution research) from the FY 2008-09 ARB budget adopted by the Legislature. This left \$189,000 GF and about \$5.3 million other funds in the research budget. For FY 2010-11, the Governor proposes to eliminate the remainder of the GF in the research budget (the ARB's only remaining GF).

2010-11 Governor's Budget. The Governor requests a \$193,000 GF reduction to the ARB budget.

Staff Comments. According to the ARB, the proposed reduction amounts to a 3.6 percent reduction to its research budget. Due to this and past cuts, the ARB hopes to utilize the University of California (UC) more heavily for its contracting, since UC overhead is only 10 percent compared to the typical 50 percent of the ARB's other contractors. The ARB indicates that this reduction will result in no cessation of research work under contract.

Although research is fundamental to the sound science on which we want our laws and regulations to be based, given the acuity of the current fiscal crisis, staff recommends approval of this request.

Staff Recommendation: APPROVE the request.

Action: Approved Staff Recommendation on a 2-0 vote. (Cogdill not present.)

Following this vote, Senator Lowenthal offered comments and concerns regarding State Implementation Plan (SIP) inventory revisions. Specifically, he requested that the ARB, LAO, and Committee staff work with his staff and the pro Tem's staff (as necessary) to develop supplemental reporting language (for adoption at a later hearing) that ensures the Legislature is kept apprised of the ARB's activities to revise the emissions inventory to ensure protection of public health and progress toward attainment of state and federal air standards.

Department Proposed for Vote-Only

3930 Department of Pesticide Regulation

The Department of Pesticide Regulation (DPR) administers programs to protect the public health and the environment from unsafe exposures to pesticides. The department: (1) evaluates the public health and environmental impact of pesticides use; (2) regulates, monitors, and controls the sale and use of pesticides in the state; and (3) develops and promotes the use of reduced-risk practices for pest management. The department is funded primarily by an assessment on the sale of pesticides in the state

Governor's Budget. The Governor's Budget includes \$79.1 million (no GF) for support of the DPR, an increase of approximately \$10 million, or 14.4 percent, over current year expenditures. This increase is almost entirely in special funds.

1. BCP-1: Transfer Structural Pest Control Board (SPCB) from the Department of Consumer Affairs (DCA) to DPR (Implement ABx4 20) (TBL). Consistent with the reorganization enacted by Chapter 18, Statutes of 2009, Fourth Extraordinary Session (ABx4 20, Strickland), the Governor proposes transfer of 34 positions and \$4.6 million (special funds) from the DCA to the DPR. Additionally, the Governor proposes TBL to clarify/ensure that the SPCB retains various enforcement options, such as issuing citations and fines which are authorized for boards and bureaus under the jurisdiction of the DCA, but are not explicitly authorized under the DPR.

Staff Comments. Save for the TBL, this request is technical and conforming to ABx4 20, and staff has no significant concerns. However, staff notes that the TBL contained in the BCP is draft language and so, while acceptable in principle, should be adopted only as "placeholder" should the Committee approve this request.

Staff Recommendation: APPROVE the request.

Action: <i>Approved Staff Recommendation on a 2-0 vote. (Cogdill not present.)</i>

Departments Proposed for Discussion

3690 Department of Toxic Substances Control

The Department of Toxic Substances Control (DTSC) regulates hazardous waste management, cleans up or oversees the cleanup of contaminated hazardous waste sites, and promotes the reduction of hazardous waste generation. The department is funded by fees paid by persons that generate, transport, store, treat, or dispose of hazardous wastes; environmental fees levied on most corporations; federal funds; and GF.

Governor's Budget. The Governor's Budget includes \$197.7 million (including \$22 million GF) for support of the DTSC, an increase of \$11.3 million, or 6 percent, over current year expenditures. This increase is primarily in special funds (and there is no increase proposed in GF).

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-1: Enforcement of Polluter Pays and Fiscal Integrity. The Governor requests conversion from limited-term to permanent one position and \$103,000 (special funds), to continue working down an ongoing backlog of outstanding accounts receivable, and maintain increased delinquent account collections for the DTSC's site cleanup program.

Staff Comments. The position in question was provided on a two-year limited-term basis beginning in FY 2008-09 to address what was then an approximately \$50 million backlog of accounts receivable that were 365 days or older. Subsequent to addition of the position, efforts by the new staff person confirmed that accounts receivable actually totaled \$55 million. While efforts of the position, over the past year and a half, have reduced accounts receivables to \$40.7 (including collections of \$7.2 million), a backlog still exists. In addition to continuing to work down the backlog, the DTSC proposes to use the requested position to carry out various ongoing work activities to improve its collections program and boost revenue. Staff has no concerns with this request given that the anticipated revenues more than make up for the costs.

2. BCP-4: Imperial County Certified Unified Program Agency (CUPA) Overtime and Equipment. The Governor requests \$360,000 (State Certified Unified Program Agency Account), including \$197,000 ongoing, to fully fund the DTSC's role as the Imperial County CUPA. The requested expenditures would be supported from fees assessed on businesses within the county.

Staff Comments. The CalEPA must designate a CUPA for any local jurisdiction that does not have one. The DTSC became the CUPA for Imperial County in 2005; however, the expenditure authority provided at the time has proven insufficient for the

department to adequately meet the demand for its services. Staff has no concerns with this request to right-size the CUPA's budget.

3. BCP-5: Strengthen the Used Oil Recycling Program (Implement SB 546). The Governor requests one position and \$128,000 (reimbursement authority) to ensure that out-of-state recyclers of California used oil meet the same testing, reporting, and permitting standards as in-state recyclers.

Staff Comments. Chapter 353, Statutes of 2009 (SB 546, Lowenthal) enhanced the Used Oil Recycling Program by leveling the playing field for recycled and re-refined oil by, among other things, requiring out-of-state used oil recycling facilities to meet California's testing, reporting, and permitting standards. Staff has no concerns with this request which would provide the staff resources necessary to ensure that out-of-state California recyclers meet the same high environmental standards as in-state recyclers and, thereby, do not gain a competitive advantage over California businesses.

4. BCP-6: Prohibit Lead Wheel Weights (Implement SB 757) (TBL). The Governor requests one position and \$135,000 (Toxic Substances Control Account—TSCA) to enforce a ban on lead wheel weights. Additionally, the Governor requests TBL to clarify that fines and penalties levied under the program (as well as the Lead-Containing Jewelry and Toxics in Packaging programs) would be deposited into the TSCA.

Staff Comments. Chapter 614, Statutes of 2009 (SB 757, Pavley) prohibits the manufacture, sale, or installation in California of wheels weights that contain more than 0.1 percent lead, and requires the DTSC to enforce this prohibition. Staff has no concerns with this request, which would help protect public and environmental health by reducing lead levels, and which reflects a conservative, targeted approach to compliance.

Staff Recommendation (for Vote-Only Items 1-4): APPROVE Items 1-4.

Action: Approved Staff Recommendation on a 2-0 vote. (Cogdill not present.)
--

DISCUSSION ITEM**1. Capital Outlay BCP-1: Stringfellow New Pre-Treatment Plant.**

Background. The Stringfellow Hazardous Waste Site (Site) is a federal superfund site near the community of Glen Avon in Riverside County. Until 1972, the Site received approximately 34 million gallons of highly acidic metal and organic waste, which has seeped into the groundwater. Federal and state courts have declared the State of California to be 100 percent responsible for remediation of the Site and for any damages resulting from any future releases from the Site. The DTSC is working to remediate the Site under the direction of the United States Environmental Protection Agency, and the Governor is seeking continued funding to plan and construct a new pre-treatment plant at the Site.

A new pre-treatment plan is necessary because an underground plume of contaminated water is migrating from the Site and threatens to contaminate the groundwater basin. The proposed plant would be used to pre-treat groundwater before it is discharged into the industrial sewer, which is essential to meet effluent quality standards and land disposal restrictions. The current pretreatment plant was constructed in 1985 as an interim treatment facility, with an intended life of five years.

Governor's Budget. The Governor requests \$1.6 million GF for the working drawings phase of the Stringfellow pre-treatment plant. The DTSC anticipates requesting approximately \$66.5 million in FY 2011-12 for the construction (FY 2011-12 through FY 2012-13) of the new pre-treatment plant.

Staff Comments. The state is obliged out of concern for public health and safety and in order to meet the requirements of the courts to remediate the Site. Therefore, despite the fact that this is a GF proposal (no other viable fund source currently exists), staff has no concerns with the proposal. However, the Committee may wish for the DTSC to provide an update on the project.

Staff Recommendation: APPROVE the request.

Action: *DENIED the request without prejudice on a 2-0 vote. (Cogdill not present.)*

The Administration indicated that the requested funds are no longer needed in FY 2010-11, due to delays in preliminary-plan phase of the project. The Committee's denial of the request therefore eliminates the need for a subsequent spring Finance Letter.

[NOTE: Following a vote on State Water Resources Control Board vote-only items (see pages 29-30), Senator Lowenthal departed the hearing. The Chair indicated that, though lacking a quorum, the Committee would hear the remaining items with the intent of bringing those that were ready back as "vote-only" at the next hearing (April 8).]

SB 63-Implementation Budget Proposals

The Governor's Budget contains multiple budget change proposals (BCPs) designed to align the 2010-11 budget with the California Integrated Waste Management Board (Waste Board) reorganization enacted by Chapter 21, Statutes of 2009 (SB 63; Strickland). The specific BCPs are listed below and affect the following departments: Department of Resources Recycling and Recovery (DRRR).

Background. SB 63 eliminated the Waste Board and transferred its responsibilities and duties, along with the Department of Conservation's (DOC) Division of Recycling, to the DRRR, which was created by the bill in the Natural Resources Agency. Additionally, SB 63 transferred the Office of Environmental Education (OEE), including the Education and the Environment Initiative Program, from the Waste Board to the Secretary for Environmental Protection (CalEPA).

2010-11 Governor's Budget. The 2010-11 Governor's Budget includes the following BCPs intended to implement SB 63:

1. Waste Board/DRRR – BCP-1: Eliminate the Waste Board. Deletes all Waste Board funding (\$212.1 million) and positions (482.9). This includes 18 Board member and supporting staff positions, and \$1.5 million for their salaries and wages. (All other positions and expenditures show up as additions/transfers to the DRRR and CalEPA—see below.)

2. DOC – BCP-9: Separate the Division of Recycling from the DOC. Deletes Division of Recycling funding (\$1.2 billion) and positions (282.9) from the DOC budget. (These positions and expenditures show up as additions/transfers to the DRRR and CalEPA—see below.)

3. DRRR – BCP-2: Create the DRRR. Provides \$1.4 billion and 765.8 positions to the new DRRR, including \$1.2 billion and 282.9 positions from the DOC Division of Recycling (see DOC BCP-9 above) and \$212.1 million and 482.9 positions from the Waste Board (see Waste Board/DRRR BCP-1 above).

4. DRRR – BCP-6: Transfer the OEE from the DRRR to CalEPA.

CalEPA – BCP-2: Transfer the OEE from the DRRR to CalEPA. These two BCPs transfer to the CalEPA 6.5 PYs (out of the current 13 PYs) assigned to the OEE—one BCP deletes the resources from the DRRR budget and the other adds them to the CalEPA budget. *(See also DRRR BCP-3, where the remaining 6.5 PYs from the OEE are shifted to activities supported by the Waste Tire Management Fund.)*

Staff Comments. From a technical standpoint, all of the proposals above are consistent with SB 63, except for the transfer of only half of the OEE positions to CalEPA (which is part of the Administration's proposal to prevent a negative balance in the Integrated Waste Management Account—IWMA—see below). Because of this

interplay between items, the Committee may wish to reserve action on these SB 63 proposals until after discussion of the IWMA beginning on the next page.

Staff Recommendation: HOLD OPEN until after discussion of IWMA Reduction proposals. If the staff recommendation on the IWMA Reduction proposals is adopted, then APPROVE Items 1-3 and HOLD OPEN Item 4.

<i>Action: Held open. [Items 1-3 will be placed on the vote-only calendar on April 8.]</i>

Integrated Waste Management Account (IWMA) Reductions

The Governor's Budget contains multiple budget change proposals designed to maintain the solvency of the IWMA. The specific BCPs are listed below.

Background. Due to increasing diversion of waste in general and a significant decline in construction waste in the aftermath of the current recession, the IWMA has seen an estimated 30 percent reduction in revenues since FY 2005-06. Meanwhile, average annual expenditures have exceeded revenues by nearly \$9 million. While the fund maintains a projected \$14.4 million reserve for FY 2009-10 (thanks in part to the repayment in the current year of a \$4.8 million loan to the GF), based on historic levels of expenditure, a structural deficit exists in the fund for the foreseeable future. Barring a sudden increase in revenues—from the tipping fees paid by owners and operators of landfills—or a reduction in expenditures, the fund will likely become insolvent in FY 2010-11 or 2011-12.

2010-11 Governor's Budget. The Governor proposes an approximately 30 percent expenditure reduction for each entity receiving IWMA funding. This across-the-board, proportionate reduction crosses six separate BCPs detailed below:

BCP	Expenditure Reduction
1. DRRR – BCP-4: IWMA Reduction Due to Declining Revenues and Loan from E-Waste Fund (Budget Bill Language—BBL). Deletes 16 positions from the waste management and reduction program and \$5.8 million (including \$1.3 million associated with the positions and \$4.5 million in OE&E—including \$3 million in contracts). Additionally, requests a \$1.5 million loan from the Electronic Waste Recycling and Recovery Account (E-Waste Fund). The Governor proposes BBL to authorize the IWMA to borrow from any special fund controlled by the DRRR for cash flow purposes.	\$5,750,000
2. DRRR – BCP-3: Shift Funding for Ten Positions from the IWMA to the Waste Tire Management Fund (Tire Fund). Shifts 10 positions, including 6.5 previously associated with the Office of Environmental Education (OEE)—see prior discussion on page 20—from IWMA funding to the Tire Fund. The request would result in no net increase in Tire Fund expenditures, as the proposal includes a shift of \$821,000 from Tire Fund local assistance—Reduction of Waste Tire Enforcement Grants (TEA)—to state operations.	\$821,000
3. DRRR – BCP-5: Shift AB 32 Funding for Six Positions from the IWMA to the Air Pollution Control Fund. Replaces \$501,000 in current IWMA funding for six DRRR positions carrying out climate	\$501,000

change activities associated with AB 32 with an equal amount from the Air Pollution Control Fund. These expenditures would be supported by a new AB 32 Cost of Implementation Fee expected to be implemented in September or October of 2010.	
4. CalEPA – BCP-1: Waste Board Funding Reduction per SB 63. Reduces by \$954,000 various expenditures from special funds administered by the former Waste Board and now under the control of DRRR, including: (1) \$287,000 in salaries and wages associated with positions abolished in fiscal year (FY) 2009-10; and (2) \$667,000 in operating expenses and equipment (OE&E) that currently support major policy and program leadership by the Secretary for Environmental Protection. Of these amounts, \$771,000 is from the IWMA. The Administration has not clearly articulated what will happen to the policy and program leadership previously supported by these funds.	\$771,000
5. State Water Resources Control Board (State Water Board) – BCP-3: Shift Land Disposal Program Funding for 13 Positions from the IWMA to the Waste Discharge Permit Fund (WDPF). Shifts \$2 million in State Water Board expenditures from the IWMA to the WDPF. The State Water Board has authority to raise fees annually to conform to the revenue levels assumed in the Budget Act.	\$2,027,000
6. Office of Environmental Health Hazard Assessment (OEHHA) – BCP-1: Reduce IWMA Funding for Environmentally Preferred Products Testing. Deletes \$108,000 and 0.5 position associated with testing emissions from environmentally preferred products. The Administration indicates this position is currently vacant.	\$108,000

Staff Comments. The California Integrated Waste Management Act, Chapter 1095, Statutes of 1989 (AB 939; Sher), established a new approach to managing California's waste stream, including mandated goals for diversion (e.g., recycling) of each city's and county's waste bound for landfills. In order to implement this legislation, the Waste Board was provided authority to collect "tipping" fees based on the tonnage of waste deposited at a landfill. Thus, from its inception, the program has been supported by a revenue stream that would, fee levels held constant, diminish over time if the program was successful.

As noted above, the success of the program at diverting waste away from landfills, combined with a significant decline in construction waste has resulted in a structural deficit in the fund for several years running. In view of the fact that annual revenues have declined by approximately 30 percent since FY 2005-06, the Governor has proposed the roughly 30-percent across-the-board spending reductions outlined above, as well as a modest loan to the fund. According to the Administration, these reductions have been targeted so as to avoid any significant adverse impact to public health and safety.

While the Governor's package of proposals would generally appear to address the short-term solvency of the fund, staff raises the question for the Committee's consideration as to whether the Governor's "across-the-board" approach ensures increasingly scarce IWMA funds are being allocated to their highest and best use. As has been frequently pointed out by the LAO and others over the past several years, an across-the-board approach to reductions, while equitable from a process standpoint, ignores or assumes away the relative value of various funding options. That is, it assumes all programs are of equal priority. In reviewing these requests, the Committee members should ask themselves the question: Do we value all of the affected activities equally?

On this note, staff offers the following, more targeted, comments regarding the above proposals.

1. DRRR – BCP-4: IWMA Reduction Due to Declining Revenues and Loan from E-Waste Fund (Budget Bill Language—BBL).

Staff Comment. Some program reduction is almost certainly necessary to bring the fund into balance and the positions in question were abolished as part of a current-year vacant position reduction drill. Based on the information provided by the DRRR, staff has no significant concerns with the proposed reductions or loan. If the Committee opts to approve this request, then staff recommends adopting the BBL as placeholder in order to allow more time to review and, if necessary, revise the proposed language.

2. DRRR – BCP-3: Shift Funding for Ten Positions from the IWMA to the Waste Tire Management Fund (Tire Fund).

Staff Comment. Of the positions in question, 3.5 are from the waste management and reduction program (similar to BCP-4 above), while the remaining 6.5 were previously associated with the Environmental Education Initiative under the OEE. Staff has no significant concerns with the shifting of positions to the Tire Fund or the shifting of Tire Fund dollars from local assistance to state operations (since the grant dollars in question were, for several years running, not being spent by the locals); however, to the extent that the Administration is still assessing how the proposed reduction in OEE staffing can address Environmental Education Initiative workload, the Committee may wish to hold this item open.

3. DRRR – BCP-5: Shift AB 32 Funding for Six Positions from the IWMA to the Air Pollution Control Fund.

Staff Comment. To the extent that the climate change activities of the six positions in question are part of an ARB-approved plan to implement AB 32, staff has no concerns with this proposal; however, the Committee may wish to hold this item open pending future discussion of the ARB's plan and the proposed fee to support it.

4. CalEPA – BCP-1: Waste Board Funding Reduction per SB 63.

Staff Comment. As noted above, the Administration has not clearly articulated what will happen to the policy and program leadership previously supported by these funds—i.e., whether they will be deleted or whether their costs will be redistributed within the CalEPA (and, if so, how). Therefore, the Committee may wish to hold this item open until the Administration has provided a workable plan or has demonstrated that the activities and associated personnel are

no longer necessary.

5. State Water Resources Control Board (State Water Board) – BCP-3: Shift Land Disposal Program Funding for 13 Positions from the IWMA to the Waste Discharge Permit Fund (WDPF).

Staff Comment. Under current law, the waste discharge permit fee may be waived for landfill operators who pay tipping fees (which have historically supported the State Water Boards regulatory responsibilities via the IWMA). However, with the decline in tipping fee revenues, the IWMA has insufficient funds to support the State Water Board's base regulatory program. As a result, the Governor proposes to shift program support to the WDPF and to require landfills that pay the tipping fee to also pay the waste discharge permit fee (i.e., discontinue the practice of waiving the waste discharge permit fee). Given the fact that State Water Board responsibilities do not change significantly based on whether or not a landfill is still receiving waste and collecting tipping fees (it needs to be monitored either way), there is a legitimate policy rationale for the Governor's proposal. Additionally, this approach is permissible under existing law. However, staff notes that requiring landfills to pay for State Water Board oversight through two different fees (a portion of the tipping fee, and now through the waste discharge permit fee) may not be the most efficient approach to funding these activities. Therefore, the Administration and/or the Legislature may wish to take a closer look at this issue going forward and with an eye toward creating a single State Water Board-only fee (if the State Water Board's share of the tipping fee continues to prove inadequate).

6. Office of Environmental Health Hazard Assessment (OEHHA) – BCP-1: Reduce IWMA Funding for Environmentally Preferred Products Testing.

Staff Comment. According to OEHHA staff, the office was required to eliminate 0.5 of a Public Health Medical Officer (PHMO) position as part of a vacant position elimination drill conducted this past fall. Subsequently, the OEHHA was told that it needed to reduce its IWMA appropriation in order to fulfill its share of the Governor's proposed 30-percent across-the-board reduction solution. Therefore, the OEHHA proposed to eliminate the remaining 0.5 PHMO position. OEHHA staff indicate that elimination of the position, which provides public health oversight of OEHHA's toxicological work in the air program, would result in delayed responses to DRRR requests to review the toxicity and the public health impacts of chemical emissions of concern, or to the emissions of specific chemicals present in recycled materials or products made from recycled materials. Due to this direct nexus with public health and safety, staff recommends the Committee deny this BCP.

Staff Recommendation: APPROVE Item 1 (with placeholder BBL) and Item 5. HOLD OPEN Items 2, 3, and 4. DENY Item 6.

Action: Held open. [Items 1, 5, and 6 will be placed on the vote-only calendar on April 8 (with the same staff recommendations). Item 3 will be held open pending discussion of AB 32 implementation on April 29. Item 4 will be held open pending clarification from the Administration on how the policy and program leadership activities will be funded going forward. Item will be held open pending additional information, requested by the Chair, clarifying the consequences to the EEL of the proposed staffing reduction (i.e., an explanation as to why 6.5 PYs are sufficient to fulfill the program's goals).]

3500 Department of Resources Recycling and Recovery

As previously noted, the DRRR was created pursuant to Chapter 21, Statutes of 2009 (SB 63; Strickland) and is largely the merger of the Waste Board (minus the board members and associated support staff) and the Department of Conservation Division of Recycling. As such, the DRRR protects public health and safety and the environment through the regulation of solid waste facilities, including landfills, and promotes recycling of a variety of materials, including beverage containers, electronic waste, waste tires, used oil and other materials. The DRRR also promotes the following waste diversion practices: (1) source reduction, (2) recycling and composting, and (3) reuse. Additional departmental activities include research, permitting, inspection, enforcement, public awareness, market development to promote recycling industries, and technical assistance to local agencies.

Governor's Budget. The Governor's Budget includes \$1.4 billion (no GF) for the DRRR, including \$1.2 billion for the Beverage Container Recycling and Litter Reduction Program, and \$200 million for the Waste Reduction and Management Program (the old Waste Board).

DISCUSSION ITEMS

1. Trailer Bill Language (TBL): Beverage Container Recycling and Litter Reduction Program ("Bottle Bill" or Program) Overhaul.

Background. At its most basic, the Beverage Container Recycling Program ("Bottle Bill" or Program) collects a deposit on beverage containers of a certain size and material type, refunds the deposit when the container is recycled, and uses the revenue from any unredeemed deposits to support recycling programs (including operating subsidies to processors). As such, the Program's solvency depends upon a less than 100 percent recycling rate.

Previously operated by the DOC, but now under the DRRR, the Program ran quite successfully over the last decade at a recycling rate of between 60 and 70 percent, accruing fund balances sufficient to run a robust set of recycling programs and still lend \$100s of millions to the GF. But as the current beverage container recycling rate approached nearly 80 percent, outflows began to outstrip inflows and, despite initial reductions in the summer of 2009, the Program ground to a screeching halt on October 20, 2009, when a 100-percent proportionate reduction was enacted due to an inadequate fund balance.

Even as the Program's fortunes flagged, the Legislature and the Governor tried to hash out a fix. However, the product of the Legislature's labor, SB 402, was ultimately vetoed, and the Program was left to flounder through the fall and into the winter of 2009-10 until the Governor released a new Bottle Bill proposal with his 2010-11 budget.

Governor's Budget. The Governor proposes TBL to make various programmatic and budgetary changes to the Bottle Bill, including the following: (1) incorporate the cost of beverage container recycling into the price paid by consumers; (2) eliminate several "unnecessary" recycling programs and subsidies; and (3) require Beverage Container Recycling Fund (BCRF) expenditures to go through the budget process—currently many are programmed in statute. As proposed, consumers would pay a higher container fee after 2013-14 (based on the findings of a cost study), once prior-year loans to the GF from the BCRF are repaid—with \$54.8 million scheduled for repayment in 2010-11 and \$98.2 million in 2011-12 (amounts that would be ear-marked solely for payment to processors).

Staff Comments. In the 2010 Eighth Extraordinary Session, the Legislature adopted and the Governor signed ABx8 7, which contained solutions to improve the short-term solvency of the BCRF, including the following:

- Accepted the Governor's plan to accelerate California Refund Value payments by distributors in order to provide a \$100 million one-time revenue increase in the current fiscal year, and provided flexibility to allow certain distributors until April 30, 2010, to make first accelerated payment. Additionally, adopted July 1, 2012, sunset to acceleration.
- Consistent with the Governor's proposal to make all program participant's "whole" for the second half of FY 2010-11, authorized program payments retroactive to January 1, 2010.
- Capped processing fee offsets made by the DRRR to manufacturers for the 2010 and 2011 calendar years at 2008 calendar year levels, resulting in approximately \$9 million in current year savings and \$18 million in budget year savings.
- Identified additional savings of approximately \$28 million in the current year (and approximately \$56 million in the budget year) via two-year suspensions of various continuous appropriations (Public Resources Code Section 14581).

While these solutions injected badly needed cash into the Program in order to keep recyclers and other participants in business in the short-run, the Legislature did not intend for ABx8 7 to be a permanent or lasting fix to the Bottle Bill. Rather, from the outset (when the Governor's Bottle Bill proposal was first heard in full committee on January 21, 2010), the Senate Budget Committee stated its view that the policy committee process (not the budget process) was the proper venue for an overhaul of the Program. As such, the Committee may wish to inform the Administration that it does not plan to act further on the Governor's Bottle Bill TBL. Staff notes that the LAO also recommends that the Governor's major proposed policy reforms be evaluated in the policy process. Additionally, staff notes that the Bureau of State Audits was recently requested by the Joint Legislative Audit Committee to conduct an expedited review of the Program and its balance sheets, and the Legislature may wish to await the result of this audit before rushing to make any major policy changes.

Staff Recommendation: NO ACTION at this time. Inform the Administration that the Committee does not plan to act further on the Governor's TBL proposal.

Action: *Consistent with the Staff Recommendation and the LAO, the Chair indicated to the Administration that the Governor's TBL proposal was best considered in the policy (committee) process, and indicated that the Committee does not plan to consider the proposal further.*

2. TBL: Change the Name of the Department of Resources Recycling and Recovery to “CalRecycle.” The Governor proposes TBL to formally change the name of the DRRR to CalRecycle.

Background. As previously noted, SB 63 created the DRRR effective January 1, 2010.

Staff Comments. Based on conversations with DRRR staff, the proposed name change is intended to be more “user-friendly” to the public and create a more recognizable and easily comprehensible “brand” for the department.

Staff notes that, while “CalRecycle” may do each of these things, it is unnecessary to make the requested change in statute. If the DRRR wishes to operate using “CalRecycle” as a “handle,” much as the Department of Boating and Waterways goes by the moniker “Cal Boating” (despite any statutory change to this effect), it may do so without a change in statute. In view of the additional facts that: (1) the Governor signed the name “Department of Resources Recycling and Recovery” into law only last July; and (2) “CalRecycle” fails to connote the fact that a large part of the DRRR’s mission is waste management (in all its many forms), staff recommends the Committee deny the proposed TBL.

Staff Recommendation: DENY the request.

Action: Held open. The Chair concurred with the staff analysis and offered to the Administration to either let the proposal “die” (no action) or to deny it formally at a future hearing.

3940 State Water Resources Control Board

The State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Boards or Water Boards) preserve and enhance the quality of California's water resources and ensure proper allocation and effective use. These objectives are achieved through the Water Quality and Water Rights programs.

Governor's Budget. The Governor's Budget includes \$825.6 million (including \$34.3 million) for support of the State Water Board in FY 2010-11. This is a 10.3 percent increase over current year expenditures due primarily to a proposed one-time augmentation of \$158 million from the Underground Storage Tank Cleanup Fund (see more detail below). The \$34.3 million in proposed GF reflects a decrease of approximately \$2.4 million in expenditures that are the net result of the Governor's requests to shift various GF expenses to fee-supported special funds.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-8: Create Waste Water Certification Fund (TBL). The Governor requests TBL to create the Waste Water Certification Fund as a repository for revenues from fees (authorized under current law) charged to certified operators of wastewater treatment plants, applicants to become certified operators, and contract operators for various services associated with certification. Additionally, the Governor requests to redirect one position from frozen general obligation bonds to help administer the increasing operator certification workload. The redirection would involve shifting \$97,000 in Proposition 84 expenditure authority to the new fund.

Staff Comments. The Operator Certification program previously operated on a reimbursement basis; however, the State Water Board is now requesting creation of a separate special fund as the program and associated revenues continue to grow.

2. BCP-10: Enforce Mandatory Minimum Penalty (MMP) Violations of Water Quality Requirements. The Governor requests four positions and \$384,000 (State Water Pollution Cleanup and Abatement Account) to timely enforce MMP violations.

Staff Comments. The State Water Board indicates that 25 staff have been redirected to address a backlog of more than 12,000 violations that occurred prior to December 31, 2007. While that work is progressing and the backlog will soon be eliminated, the State Water Board expects a new backlog to begin mounting if additional staff are not added to handle the approximately 2,000 new MMP violations that occur annually.

Staff notes that, according to the State Water Board, a minimum of \$6 million in penalties would be generated annually if the requested staff are able to process the anticipated 2,000 MMP violations (each assessed a statutorily mandated \$3,000).

Thus, this request would generate offsetting revenues while enforcing laws intended to safeguard public health and safety.

3. BCP-11: Waste Discharge Permit Fund Fee Collections. The Governor requests one position and \$96,000 to assume front-end research duties and establish a collections strategy on debts owed to the Waste Discharge Permit Fund.

Staff Comments. The State Water Board currently pays the AG approximately \$125,000 annually for fee collections. However, due to the current fiscal crisis, the Attorney General's (AG) office is no longer able to support front-end research duties, but will continue to file judgments once the State Water Board identifies which amounts are collectible. According to the State Water Board, the requested position will result in potential collections of \$2 million or more per year (compared to \$241,000 collected by the AG over one year). Staff has concern with this proposal given its ability to generate revenue sufficient to "pay for" itself.

4. BCP-13: Water Quality and Other Runoff—Watershed Improvement Plan (WIP) Workload (SB 310 Implementation). The Governor requests one two-year limited term position and \$158,000 (Water Discharge Permit Fund) to assess the workload and level of service necessary to implement Chapter 310, Statutes of 2009 (SB 310, Ducheny), which allows local agencies to develop their own WIPs.

Staff Comments. SB 310 allows local agencies (locals) that have permits for stormwater systems to voluntarily develop a WIP, subject to approval of the regional Water Board. The WIP enables the local to not only identify regulatory requirements, but to provide a plan to meet them in a way that is most economical and effective. Improved stormwater management via a WIP allows the local to better meet water quality standards (e.g., Total Maximum Daily Loads), and to more effectively conserve stormwater to bolster limited water supplies. The requested limited-term position is intended to help the State Water Board assess the level of service required to enable local agencies to receive timely Water Board approval of their WIPs.

Staff Recommendation: APPROVE the above requests (Items 1-4).

Action: <i>APPROVED the Staff Recommendation on a 2-0 vote. (Cogdill not present.)</i>

DISCUSSION ITEMS**Proposals to Shift GF Expenditures to Fee-Supported Special Funds (Items 1-3):**

According to the Administration, the following three items are proposals to help address the state's fiscal crisis by reducing GF expenditures for activities that, based on the "polluter pays" principle, arguably should be supported by fees.

1. BCP-1: National Pollutant Discharge Elimination System (NPDES) Wastewater Program Fund Shift.

Background. In FY 2006-07 the State Water Board redirected \$4 million in NPDES federal funds to a different program and fee payers prevailed upon the Legislature and Governor to offset their fee burden by partially backfilling the \$4 million with \$1.4 million in GF. This proposal would remove the GF and increase fees to replace it.

The NPDES program is authorized by the Clean Water Act and administered by the Water Boards under an agreement with the United States Environmental Protection Agency that requires the Water Boards to help protect water quality by reviewing and renewing discharge permits, monitoring discharge reports, and issuing enforcement actions on permit violations.

2010-11 Governor's Budget. The Governor proposes to remove \$1.4 million GF from the NPDES program and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

Staff Comments. The State Water Board is statutorily required to adjust fees annually to conform to the revenue levels set forth in the Budget Act. According to State Water Board staff, based on current NPDES fee schedules, a proposed 9.3 percent fee increase would be needed to fund this request.

Given the magnitude of the current fiscal crisis, staff has no concerns with the proposed "polluter pays" approach.

Staff Recommendation: APPROVE the request.

<i>Action: Held open. [This item will be placed on the April 8 vote-only calendar, as the Chair noted no concerns with the Staff Recommendation.]</i>
--

2. BCP-2: Irrigated Land Regulatory Program (ILRP) Fund Shift.

Background. When the ILRP fee schedule adopted by the State Water Board in June 2005, failed to raise the anticipated level of revenue, the Legislature allocated \$1.8 million GF in FY 2006-07 to make up the difference. This proposal would remove the GF and increase fees to replace it.

The ILRP regulates discharges from irrigated agricultural lands in order to prevent impairment of the waters that receive the discharges. For example, discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals from cultivated fields into surface waters. Regional Water Boards issue conditional waivers of waste discharge requirements to growers that contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments are found.

2010-11 Governor's Budget. The Governor proposes to remove \$1.8 million GF from the ILRP and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

Staff Comments. The State Water Board is statutorily required to adjust fees annually to conform to the revenue levels set forth in the Budget Act. According to State Water Board staff, based on revenue estimates for the current agricultural waiver fee schedule, this proposal would require the current 12 cents per acre charge to be increased to approximately 42 cents per acre.

Given the magnitude of the current fiscal crisis, staff has no concerns with the proposed "polluter pays" approach.

Staff Recommendation: APPROVE the request.

Action: Held open. [This item will be placed on the April 8 vote-only calendar, as the Chair noted no concerns with the Staff Recommendation.]

3. BCP-4: Water Rights Program (WRP) Fund Shift.

Background. The Court of Appeal previously found against the state for funding certain WRP workload from a fee-supported special fund—the Water Rights Fund (WRF). Those activities are currently supported by the GF. The Governor is proposing to shift the bulk of these expenditures back to the WRF.

From its inception in 1914 until FY 2003-04, the WRP was primarily supported by the GF (90 to 95 percent). However, due to an earlier fiscal crisis, program funding was cut and eventually shifted entirely onto a fee-supported special fund—the WRF. Subsequently, fee payers challenged the statutes authorizing the WRF and the fees that are deposited into it. While a superior court upheld the fee statutes and associated regulations in their entirety, the Court of Appeal found that in some specific instances (about 30 percent of activities associated with pre-1914 and riparian rights), the benefits accruing to the fee payers were not sufficiently proportional to the size of the fee, and the related regulations were overturned. An appeal of this decision is currently pending with the Supreme Court, which has not yet scheduled oral arguments.

2010-11 Governor's Budget. The Governor proposes to remove \$3.2 million GF from the WRF and replace it with an equal amount from the fee-supported WRF.

Staff Comments. The State Water Board contends that the Court of Appeal missed the mark when it concluded that about 30 percent of WRP resources were used to conduct activities associated with pre-1914 and riparian rights (and therefore not to be funded by WRF fees). Instead, the State Water Board contends that this workload uses only about five percent of WRP resources. Therefore, the requested fund shift represents the difference between what the Court of Appeal's estimate and the State Water Board—about 25 percent of WRP funding.

Staff notes that were the Supreme Court to rule against the state's interpretation of the allowable uses of water rights fees, the GF could be required to repay any inappropriate charges (which might include those proposed here).

Staff Recommendation: HOLD OPEN to allow more time to assess the legal risks of the proposal.

Action: <i>Held open.</i>

4. BCP-5: Improve Efficiency of Water Rights Permitting.

Background. According to the State Water Board, one of the major delays in processing and enforcing water right permits and petitions is completing California Environmental Quality Act (CEQA) documents by the applicant/petitioner or their environmental consultant. This proposal would enable the State Water Board to pay environmental consultants directly and then seek cost recovery from the applicant/petitioner.

The State Water Board must comply with CEQA when it approves a water right permit or a petition for change of an existing water right. As CEQA Lead Agency, the State Water Board directs water right applicants and petitioners to enter into a Memorandum of Understanding for payment and completion of CEQA activities and documentation, and the applicant/petitioner, State Water Board staff, and the CEQA consultant(s) are all signatories to the memorandum. The current practice is for the applicant/petitioner to select and pay for a consultant, but the consultant works at the direction of State Water Board staff. Under this arrangement, the consultant effectively has two “bosses,” and according to the State Water Board it is not uncommon for this to lead to below-par work and/or work stoppages—all of which delays the process. Under the proposed solution, with control over which consultants to hire and serving as the undisputed “boss,” the State Water Board believes it will be able to expedite the water rights permit and petition processes.

2010-11 Governor’s Budget. The Governor proposes to provide \$1 million (Water Right Fund) so that the State Water Board may hire environmental consultants directly and seek cost recovery from applicants/petitioners.

Staff Comments. According to State Water Board staff, the \$1 million requested is intended to serve as a pilot project for the proposed new approach, and would be sufficient to fund preparation of CEQA documents for approximately 20-30 permits/petitions.

Staff’s primary concern with this proposal is the certainty (or uncertainty as the case may be) with which the State Water Board can recover costs from the applicant/petitioner. As State Water Board staff note, most CEQA documentation for water right approvals is for modifications to existing projects where applicants are operating under less restrictive conditions and, therefore, may not necessarily want to make the changes required under new CEQA documents. Similarly, three-quarters of all applications for new water right permits are for appropriations initiated illegally (without first obtaining a license) where the applicant will continue to illegally divert throughout the application process. In each case, it is unclear what incentive the applicant/petitioner has (or obligation they are under) to pay for CEQA documentation, the contents of which they may not like. Furthermore, to the degree that the CEQA documents cast doubt upon the eventual success of the requested permit or petition, the applicant/petitioner might have less (or no) motivation to pay for services already

rendered. Staff notes that the Committee may wish to hold this item open until the State Water Board can adequately demonstrate its ability to recover these costs.

Should the Committee ultimately opt to adopt this pilot project, then staff recommends doing so on a limited-term basis (perhaps three years) and requiring the State Water Board to measure and report on the efficacy of the approach before seeking continued authorization.

Staff Recommendation: HOLD OPEN.

Action: Held open. The State Water Board indicated its intent to use its authority under CEQA to charge applicants/petitioners up-front for services. The Chair requested the Administration to work with staff to develop reporting language intended to allow assessment of the proposed "pilot" program in several years' time. [Regarding reimbursements: Staff requests the State Water Board to clarify whether the intent is to charge applicants/petitioners for all costs up-front, or only partial costs. If the latter, then please explain how compliance will be guaranteed. Regarding reporting language: Staff requests the State Water Board to identify performance metrics that can be used to assess the success of the program in determining whether it should be made permanent or expanded in future years.]

5. BCP-6: Expedite 401 Water Quality Certifications for Federal Energy Regulatory Commission (FERC) Hydroelectric Projects.

Background. Operators of publicly and privately owned hydroelectric facilities must obtain a license to operate from the FERC, which requires a water quality certification issued pursuant to the Clean Water Act (and the more stringent requirement of CEQA) by the State Water Board. According to the State Water Board, this request is intended to provide adequate staffing to address a surge in licensing and relicensing workload as projects initially approved in the 1950s and 1960s come up for relicense and new projects, and is aimed at helping expedite the licensing of new projects in order to achieve the 20-percent Renewable Portfolio Standard (RPS) set in statute as well the 33-percent renewable energy goal targeted by the Governor in Executive Order (EO) 2-14-08.

The State Water Board indicates there are currently 23 projects that are undergoing FERC relicensing, one project undergoing initial FERC licensing, and one undergoing FERC decommissioning. Additionally, there are 11 existing projects that will begin the relicensing process during the next decade, and six new pumped storage projects that may undergo FERC licensing.

2010-11 Governor's Budget. The Governor requests five positions and \$603,000 (Water Right Fund), supported by a fee increase, to augment the State Water Board's Water Quality Certification Program.

Staff Comments. As noted above, the FERC licensing process (which can take up to 10 years) requires the State Water Board to issue a water quality certification pursuant to the Clean Water Act as well as the more stringent CEQA requirements. According to the State Water Board, FERC has expressed concern with the protracted time line needed to address CEQA concerns, and has expressed interest in jointly preparing National Environmental Protection Act (NEPA)/CEQA environmental documents as a means of expediting the certification process. For some time, the parties have been working to reach a joint agreement through a Memorandum of Understanding (MOU); however, the State Water Board indicates it will not be able to meet its staffing commitment in the MOU without the requested resources. Staff notes concern that, as of this writing, the details of the proposed MOU are still unclear, particularly in regard to any requirements that would necessitate a State Water Board staffing increase.

State Water Board staff have emphasized the need for the requested resources in order to more timely weigh-in on the large number of projects up for relicensing in order to ensure, among other things, the adequacy of flow criteria (particularly where it affects the Sacramento-San Joaquin River Delta). However, staff notes concern that the BCP explicitly cites the Governor's renewable energy standard EO as driving the need to expedite these "clean" energy projects. As was discussed earlier in this agenda under the Air Resources Board, it is the view of staff, the LAO, and many members, that the Governor has overstepped his authority in directing state departments, including, apparently, the State Water Board, to implement his 33-percent renewable energy goal.

Based on this, and the MOU concern noted above, the Committee may wish to hold this item open.

Staff Recommendation: HOLD OPEN.

Action: Held open. [Staff requests the State Water Board to provide some specific examples of (and quantify when/where appropriate) the benefits of approving these positions and/or the costs of not approving them. That is, what specific environmental benefits or costs avoided will occur if these positions are approved and the State Water Board is better able to participate in FERC relicensing activities?]

6. BCP-7: Augment Basin Planning and Water Quality Standards Program.

Background. The Basin Planning program sets the minimum water quality level that must be achieved in the waters of the state for the protection of beneficial uses. Federal regulations require a triennial review and update of each basin plan; however, according to the State Water Board, a lack of staffing has kept it from fully complying with this requirement. As a result, the State Water Board indicates it has experienced difficulty moving forward with regulatory decisions and is at an increased risk for litigation. The requested augmentation would address this deficiency.

The preparation, adoption, and regular updating of Regional Water Boards' basin plans provides the foundation for all the Water Boards' regulatory action and is required by state law as well as the federal Clean Water Act. Basin plans designate beneficial uses, establish water quality objectives, and specify a program of implementation needed for achieving these objectives for both surface and groundwater.

Between 1990 and 1995, program resources were increased—to 51.4 positions and \$4.6 million (GF and bond funds)—in order to update all basin plans. However, as bond funds ran out and special funds were inadequate to make up the difference, the program was reduced to 37.5 positions in FY 1997-98, where it remained until \$1 million in funds for contracts was added in FY 2006-07. Although, according to the State Water Board, the workload in this area has increased significantly over the years, no new staff resources have been provided, and the program is currently funded for 37.5 positions and \$1 million in contracts.

2010-11 Governor's Budget. The Governor requests 8.9 positions and \$746,000 (reimbursement authority), in order to allow third parties to fund priority work.

Staff Comments. The inability of the Water Boards to timely complete required triennial reviews of basin plans threatens the Water Boards' ability to adequately protect public health and safety by setting appropriate water quality standards. Additionally, as noted above, the current lack of resources has increased the state's vulnerability to litigation. For example, the State Water Board notes that in a recent court ruling, the Los Angeles Water Board and the State Water Board were ordered to cease regulation of stormwater discharges that are based on basin plan requirements until such time as the Water Boards complete a new triennial review. The State Water Board notes concern that the need to address an increasing number of lawsuits of this nature could further siphon away resources that would otherwise be applied to updating basin plans.

Although the Administration makes a compelling case for the need for more resources in the basin planning program, staff notes concern with the proposed approach to allow third parties to fund specific Water Board activities. This could create either the appearance, or the reality, of a "pay to play" system which could not only undermine public confidence in the state's water quality standards, but could also lead to "regulatory capture" and a weakening of state water quality oversight. While the State Water Board indicates this request is based on discussion with stakeholders of items of

mutual interest, it is not clear how the state would maintain its independence and impartiality if an interested party is paying directly for the State Water Board's work. For example, listed below are a few of the potential projects and the funding/sponsoring entity:

- Santa Ana Water Board – \$400,000 per year from the Storm Water Quality Taskforce (funded by Orange, Riverside, and San Bernardino Counties as well as Orange County Sanitation District) to review recreational water quality standards; and \$150,000 per year from various cities and water and utility districts to revise the Nitrogen and TDS amendment.
- Central Valley Water Board – \$100,000 per year from the California Urban Water Agencies for work on a drinking water policy; and \$92,000 per year from the Meridian Beartrack Company for beneficial use assessment and possible de-designation.
- San Francisco Bay Water Board – \$100,000 per year from the Bay Area Clean Water Agencies to work on mutually agreed upon issues.
- North Coast Water Board – \$50,000 from the Department of Fish and Game to work on revising the Hatcheries Action Plan.

Staff notes, that while most, or all, of the above proposals may be perfectly above board, a quick Google search turns up the fact that the Central Valley Water Board previously issued a cease and desist order (in 2001) to Meridian Beartrack Company (see the second bullet) requiring it to meet waste discharge requirements in association with closure of the Royal Mountain King Mine. This history simply highlights the fact that the Water Boards are required to take enforcement action on behalf of the public from time-to-time, and raises the question: Would the Central Valley Water Board, consciously or unconsciously treat a mining company differently if it was, to some degree, fiscally dependent upon that company?

Staff notes that although current law does not allow the Waste Discharge Permit Fund to be used to support planning activities, if the Committee finds a compelling need to better fund basin planning, it may wish to consider a statutory change to permit this option given the concerns with the Governor's proposed funding plan noted above.

Recommendation: HOLD OPEN until the Administration has adequately addressed staff concerns regarding the independence and integrity of its oversight.

Action: Held open. The Chair agreed with staff's concerns regarding the potential perception and/or reality of this becoming a "pay to play" program, and requested the Administration to talk more with staff on how it plans ensure the integrity (independence and impartiality) of the state's oversight.

7. BCP-9: Implement AB 32 Climate Change Scoping Plan.

Background. The California Global Warming Solutions Act of 2006 (AB 32, Nunez) requires the reduction of statewide greenhouse gas (GHG) emissions in California. According to the State Water Board, development, conveyance, treatment, and discharge of water are one of the most energy intensive processes in the state, accounting for 19 percent of California's electrical generation, and are therefore a significant source of GHG emissions. As such, the proposed resources are intended to help the State Water Board implement portions of the Climate Change Scoping Plan (adopted by the Air Resources Board—ARB) intended to: (1) increase the availability of local water supply (thereby reducing the energy needed to transport, store, and convey it over long distances); and (2) increase water recycling at waste water treatment plants, the capture and infiltration or storage of storm water, and promote the development of regional infiltration facilities and neighborhood facilities.

2010-11 Governor's Budget. The Governor requests two positions and \$535,000 (Air Pollution Control Fund—supported by the AB 32 Cost of Implementation Fee), to carry out GHG emission reduction measures identified for State Water Board implementation. Of the \$535,000 requested, \$300,000 is for contract resources to design a system to report on the water-energy benefits achieved and to measure progress towards the targeted GHG reduction for these measures contained in the Climate Change Scoping Plan.

Staff Comments. The California Global Warming Solutions Act of 2006 (AB 32, Nunez) requires the reduction of statewide greenhouse gas emissions (GHG) to 1990 levels by 2020; charges the Air Resources Board (ARB) as the sole state agency responsible for monitoring and regulating sources of GHG emissions; and gives the ARB a role in coordinating with other state agencies and stakeholders in implementing AB 32. Thus, the Committee may wish to defer action on this item until after discussion of AB 32 implementation with the ARB (currently scheduled for hearing on April 29, 2010). Additionally, the proposed expenditures are to be supported from a new AB 32 Cost of Implementation Fee that the ARB expects to levy beginning in fall 2010. This item is also scheduled for discussion on April 29.

Staff Recommendation: HOLD OPEN

<i>Action: Held open pending discussion of AB 32 implementation on April 29.</i>

8. BCP-12: Continuing Program Implementation for Propositions 13, 40, 50, & 84 (BBL).

Background. As the Committee discussed at its March 4 hearing, the cashflow crisis of FY 2008-09 precipitated a bond freeze in December 2008 in which there was insufficient cash to fund existing bond expenditure authorizations. Subsequently, the Treasurer conducted bond sales in March and April of 2009; however, the supply of bond proceeds was still insufficient to meet the statewide demand (reflected by bond appropriations in the Budget Act). As a result, the State Water Board received approximately one third of the money needed to fund its Proposition (Prop) 13, 40, 50, and 84 bond projects. This request is for reappropriation of many of those amounts as well as appropriation of new amounts in order to carry out the intended bond spending plan.

2010-11 Governor's Budget. The Governor requests various reappropriations of Prop 13 and 50 funds, reversions of various Prop 50 and Prop 84 amounts, and various new appropriations, including the following totals for local assistance: Prop 13 – \$2.3 million; Prop 40 – \$17.9 million; and Prop 50 – \$36.5 million. Additionally, the Governor requests BBL to extend the encumbrance period for the above amounts from one year to three years (i.e., make them available until June 30, 2013).

Staff Comments. Consistent with the Committee's approach at the March 4 hearing, the members may wish to hold this item open pending further news on spring bond sales and the state's overall fiscal health. Given that approximately two-thirds of the State Water Board's bond needs went unmet in last year's bond sales, the Committee may also want to have the Administration respond to the questions below.

Committee Questions:

1. What was the State Water Board's stated "need" going into the 2009 spring bond sales, and how much did it subsequently receive in the way of bond cash?
2. How many, and what kinds of, projects received funding and did not receive funding? How many projects started before the bond freeze have still not been restarted?
3. Why were State Water Board projects not more competitive in receiving scarce bond proceeds?
4. Does the State Water Board expect any greater success in upcoming bond sales? (Staff notes concern that this BCP indicates that staff previously working on bond-related functions have been redirected and are now working on other activities "for the next few years.")

Staff Recommendation: HOLD OPEN.

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture. The Chair requested additional information on the status of State Water Board bond projects, including an accounting of the project backlog. [Staff requests the department respond in writing to this request as well as the questions in the public agenda and provide an update on any bond proceeds received from the March 2010 sale.]

BCP-14: One-Time Augmentation for Underground Storage Tank Cleanup Fund (USTCF).

Background. Chapter 649, Statutes of 2009 (Ruskin, AB 1188) temporarily increased storage fees (until January 1, 2013) for each gallon of petroleum placed in an underground storage tank. The Governor requests a one-time augmentation from the fund to spend a portion of these new revenues.

The USTCF is in essence an insurance program supported by petroleum underground storage tank owners who pay a fee for coverage should they have a leak from their underground storage tank. The USTCF provides up to \$1.5 million in reimbursement per occurrence to petroleum underground storage tank owners and operators. AB 1188 was passed in order to address a cash shortfall in the fund.

2010-11 Governor's Budget. The Governor requests a one-time augmentation of \$158 million to the USTCF.

Staff Comments. Consistent with the requirements of AB 1188, a performance audit of the USTCF was recently released (February 2010) that found, among other things, that the program was premised on reimbursing participants as quickly as possible and, in so doing, lacks sound financial management practices and does not utilize effective cost containment measures. For example, the audit found that the USTCF does not require all claimants expecting reimbursements to provide project plans or cost estimates up front for review and approval prior to cleanup work beginning. The audit linked these inadequacies to the USTCF's 2008 financial crisis as average project costs skyrocketed—rising, over the last four years, from \$131,000 to \$250,000 (for closed projects) and approaching \$400,000 for existing projects.

Given concerns raised by these recent audit findings, the Committee may wish to hold this item open pending an update from the State Water Board on steps it is taking to improve management of the USTCF.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair requested the State Water Board to report back on the implementation of audit recommendations. [Staff requests a written update be provided no later than April 30, 2010, for consideration in a May hearing.]

2009 Water Package Implementation Proposals (Items 10-12)**9. BCP-15: Water Conservation Measures (Implement SBx7 7).**

Background. Chapter 4, Statutes of 2009, Seventh Extraordinary Session (Steinberg, SBx7 7) enacted various requirements and processes aimed at improving urban and agricultural water planning and reducing statewide water use. Consistent with existing law and past practice, SBx7 7 tasked the Department of Water Resources (DWR) with implementing the bill; however, the State Water Board notes that it is the lead agency in the regulatory and adjudicatory aspects of applying and enforcing water conservation requirements. It is on this basis that the Governor is requesting an augmentation for the State Water Board in association with SBx7 7.

2010-11 Governor's Budget. The Governor requests one position and \$155,000 (reimbursement authority) to perform an advisory role in implementation of SBx7 7.

Staff Comments. Staff notes concern that the requested resources are unnecessary as the State Water Board already has staff working on the California Water Plan and the "20x2020 Water Conservation Plan" that can act as advisors on SBx7 7 implementation. However, consistent with Committee actions on March 4, staff recommends this item be held open until all proposals related to the 2009 Water Package have been heard and the Governor's expenditure plan can be assessed in its entirety.

Staff Recommendation: HOLD OPEN.

<i>Action: Held open pending consideration at a future hearing of other pieces of the 2009 Water Package.</i>
--

BCP-16: Delta Watermaster and Delta Flow Criteria (Implement SBx7 1).

Background. Chapter 5, Statutes of 2009, Seventh Extraordinary Session (Simitian, SBx7 1) established a framework to achieve the co-equal goals of providing a more reliable water supply to California and restoring and enhancing the Delta ecosystem. In support of this effort, SBx7 1 requires the State Water Board to: (1) establish “the Delta Watermaster” to exercise the State Water Board’s authority to monitor and enforce orders and license and permit terms and conditions that apply to conditions in the Delta; and (2) develop new flow criteria for the Delta ecosystem necessary to protect public trust resources, and inform planning decisions in the Delta Plan and the Bay Delta Conservation Plan. The requested resources would be used to implement these requirements.

2010-11 Governor’s Budget. The Governor requests 4.5 positions and \$673,000 (Water Rights Fund) for the Delta Watermaster Program and \$590,000 (reimbursement authority) for development of Delta flow criteria.

Staff Comments. Staff notes no concerns with this proposal, as the resources requested are consistent with expectations of the bill’s costs at the time of passage. However, consistent with Committee actions on March 4, staff recommends this item be held open until all proposals related to the 2009 Water Package have been heard and the Governor’s expenditure plan can be assessed in its entirety.

Staff Recommendation: HOLD OPEN.

<i>Action: Held open pending consideration at a future hearing of other pieces of the 2009 Water Package.</i>
--

BCP-17: Improve Water Diversion and Use Reporting (Implement SBx7 8).

Background. Chapter 2, Statutes of 2009, Seventh Extraordinary Session (Steinberg, SBx7 8) enacted measures to improve accounting of water diversions, and appropriated existing bond funds for various activities to benefit the Delta ecosystem and secure the reliability of the state's water supply. Additionally, SBx7 8 provided 25 positions and \$3.8 million (Water Rights Fund) to the State Water Board for water diversion reporting, monitoring, and enforcement.

2010-11 Governor's Budget. The Governor requests 2.5 positions and \$253,000 (Water Rights Fund) to process new and supplemental Statements of Water Diversion and Use (Statements) filed in the first year after enactment, and to prepare emergency regulations that allow for the electronic filing of reports.

Staff Comments. According to the State Water Board, the fact that SBx7 8 deletes various exemptions for diverters, and establishes consequences for failure to file Statements or supplemental Statements will result in a near-term increase in workload justifying the requested resources. However, staff notes that SBx7 8 authorized 25 new positions (and associated funding), and the Legislature's expectation was that the State Water Board would implement the bill out of these resources. Therefore, in all likelihood staff will ultimately recommend this BCP be denied; however, consistent with Committee actions on March 4, staff recommends this item be held open for the time being until all proposals related to the 2009 Water Package have been heard and the Governor's expenditure plan can be assessed in its entirety.

Staff Recommendation: HOLD OPEN.

<p><i>Action: Held open pending consideration at a future hearing of other pieces of the 2009 Water Package.</i></p>
